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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID ANTHONY BREAUX,

Petitioner,

v.

**RON DAVIS, Warden of San Quentin State
Prison,**

Respondent.

2:93-cv-00570-JAM-DB

**JOINT STATEMENT OF THE PARTIES
[AND PROPOSED ORDER]**

Judge: The Honorable Deborah Barnes

On June 24, 2021, the Court granted the parties joint request to continue the filing of a proposed schedule for completion of discovery and pre-evidentiary hearing matters until this date. (Doc. 331.)

Counsel for both parties met and conferred on November 3, 2021 and agreed to the following schedule: by no later than April 15, 2022, counsel for respondent will file a motion to depose Mr. Breaux. While the parties would not be able to depose Mr. Breaux at this time due to COVID-19 restrictions, counsel agree that filing and arguing the motion is nevertheless one way counsel can continue to move this case forward. Due to respondent's counsel's preference to depose Mr. Breaux on the steroid claim (if the court orders it) prior to the pharmacology experts

1 to avoid multiple depositions of the experts, counsel cannot proceed on the expert depositions
2 related to this claim at this juncture.

3 However, counsel identified another possible way for the parties to continue moving
4 forward on this case that is not dependent on deposing Mr. Breaux preliminarily. Counsel for Mr.
5 Breaux will contact his mitigation expert, Dr. Gretchen White, and find out if she is amenable to
6 appearing at an in-person deposition, and if so, under what conditions. If Dr. White is agreeable
7 to being deposed in person, counsel for Mr. Breaux will find out available dates, coordinate to
8 schedule a date with respondent's counsel, and begin preparing Dr. White for the deposition.
9 Depending on Dr. White's schedule, as well as counsels' schedules, that deposition may take
10 place after the April 15, 2022 deadline for respondent to file the motion to depose Mr. Breaux.

11 Following Mr. Breaux's deposition (if granted by the Court), and Dr. White's deposition,
12 the out-of-court testimony anticipated at this time is anticipated to be Mr. Breaux's pharmacology
13 expert, Dr. Jonathan Lipman, and possibly respondent's pharmacology expert, Dr. Hallam
14 Guggelmann and former court clerk Virginia Duffek.

15 Counsel agree to this timeline in light of the time it will take to re-review voluminous
16 materials in this matter and due to counsels' involvement in other cases. Counsel for the Warden
17 is co-counsel on a murder and attempted murder case set for preliminary examination on
18 December 2, 2021. (*People v. John Conway*, Sierra County case number 20CR0057.) In addition
19 to that case, counsel has numerous respondent's briefs due on the Court of Appeal, and is
20 responsible for handling recusal motions for the Attorney General's Sacramento and Fresno
21 offices.

22 Separately, counsel for Mr. Breaux, Brian Abbington, is co-counsel in death penalty case
23 no. 1:14-cv-01865-LJO-SAB, *Daniel Lee Whalen v. Warden*. Recently, Mr. Abbington assisted
24 counsel of record in case no. CRHC-16-005564 by editing a Reply to Informal Response to
25 Petition filed in Stanislaus County Superior Court on October 22, 2021.

26 In addition, Mr. Abbington is co-counsel in Ninth Circuit Court of Appeals case no. 16-
27 99009, *Paul C. Bolin v. Ronald Davis*, Warden, San Quentin State Prison. Mr. Bolin's
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unopposed motion for an extension of time to file a petition for rehearing was granted on September 22, 2021; the petition is due to be filed on or before November 10, 2021.

Mr. Abbington is also co-counsel in death penalty case: no. 2:13-cv-02041 KJM KJN, *Jerry Noble Kennedy v. Warden*. Mr. Kennedy's brief on the issue of successiveness in Colusa County Superior Court Case No.: 19005 is due no later than January 24, 2022; the respondent's response is due no later than April 25, 2022; and Mr. Kennedy's reply is due no later than May 25, 2022.

For all of these reasons, the parties propose that respondent's counsel file a motion to depose Mr. Breaux by April 15, 2022. Further, Mr. Breaux's counsel will contact his expert Dr. White to see if the parties can depose her. Lastly, the parties will file an update with the Court on April 15, 2022 and a further schedule to complete discovery and out-of-court testimony in this case.

Dated: November 5, 2021

Respectfully submitted,

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Respectfully submitted,
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